of the improper admission of evidence, I must bear in mind the fact that the magistrate would have convicted the defendant in any event. In the result therefore, I find that, by virtue of the inaccurate warning which the ASI gave to the defendant in relation to s 22, there was a threat hanging over the defendant such as ought to have ruled out the admissions which he made to officers of the Bureau though, if the ASI had *not* suggested that it was an offence to fail to comply with that section, I would have admitted the confessions of the defendant as voluntary even if he had drawn attention to the legal duty imposed by the section.

Nevertheless, even if these statements had not been admitted, I have no doubt that the magistrate would still have accepted the evidence of Panjang and Tamat as correct and convicted the defendant of the first two charges. Accordingly, there has been no failure of justice. I can find no reason to disagree with such a conclusion and accordingly dismiss the appeal against conviction.

Sentence

The question of the proper sentence for a corruption offence has already been considered by me in Criminal Appeal No 1/86: *PP* v *Hamid bin Ibrahim*.[1] In that case, I first drew attention to the fact that a corrupt transaction under s 6, of which this defendant was convicted, carries with it a maximum term of imprisonment of seven years and a fine of $30,000.

I suggested that where a public servant, as the defendant was at the time, is convicted of an offence against s 6, the magistrate should regard a sentence of 12 months' imprisonment as the minimum.

There may, however, be special circumstances in which a magistrate may decide to be more lenient, or perhaps more severe. None of such circumstances seem to apply in this case. The defendant, although he had no previous convictions, was a man of 28, and there was no suggestion that he was subject to any pressure from a superior officer.

In the case to which I have referred, I suggested that I would have imposed a total sentence of 18 months, which is the total sentence imposed by the magistrate in this case. The only question which remains is whether these two sentences ought to be concurrent or consecutive.

The charges of which the defendant was convicted were separated by a period of more than three weeks. Each charge involved a separate person and an entirely separate boat trip from Bandar Seri Begawan to Labuan. I regard each of these charges as a separate and distinct offence for which, in accordance with the principles set out in *Hamid bin Ibrahim*,[1] consecutive sentences should be imposed.

I am satisfied that the sentences imposed by the magistrate on this defendant cannot be said to be excessive and the appeal against sentence is also dismissed.

Appeal dismissed.

Solicitors: *Szetu & Co.*

Reported by *Yap Shao Sin*

Public Prosecutor v Abdul Muhin bin Hj Moksin

HIGH COURT (BANDAR SERI BEGAWAN) – CRIMINAL TRIAL NO 1 OF 1989
ROBERTS CJ
30 JANUARY 1989

Criminal Procedure – Sentencing – Four years' imprisonment and 12 strokes of whipping for offence of robbery – 17-year-old offender – Amendments made to s 392 of Penal Code on imposition of minimum sentence of whipping – Mitigation factor – Penal Code, s 392 – Emergency (Penal Code) (Amendment) Order 1988 – Criminal Procedure Code, s 257(1) – Interpretation and General Clauses Act (Cap 4), s 38

The defendant pleaded guilty to a charge of robbery under s 392 of the Penal Code. In this judgment, the court dwelt on the sentencing principles applicable in the defendant's case.

Held, sentencing the defendant to four years' imprisonment and 12 strokes of whipping with a light rattan cane:

(1) The Emergency (Penal Code) (Amendment) Order 1988 provides that a defendant convicted of an offence against s 392 is liable to the maximum sentence of 30 years' imprisonment and also with whipping of not less than 12 strokes.

(2) As the defendant was aged slightly over 17 at the time of the offence, he was therefore a 'youthful offender' under s 2(1) of the Criminal Procedure Code. By s 257(1) of the Criminal Procedure Code, the maximum sentence of whipping for a youthful offender shall be 12 strokes. Thus in the case of s 392, where a youthful offender is involved, the maximum and minimum number of strokes will be the same.

(3) The court has taken into account the youth of the defendant, his expression of regret, his plea of guilty and his previous conviction for theft. However, no weight is given to the defendant's plea that he was affected by pills, in view of s 84 of the Penal Code. Even if the defendant did not know what he was doing at the time of the robbery, intoxication of this nature cannot constitute a defence since the defendant took the pills voluntarily on his own admission.

Legislation referred to
Criminal Procedure Code ss 2(1), 257(1)
Emergency (Penal Code) (Amendment) Order 1988
Interpretation and General Clauses Act (Cap 4) s 38
Penal Code ss 85, 392

Ivan Leong (Deputy Public Prosecutor) for the State.
Defendant in person.

Cur Adv Vult

Roberts CJ: The defendant has pleaded guilty to an amended charge of the robbery of Mrs McKeown on 17 November 1988 in the middle of the day in the centre of Bandar Seri Begawan.

The facts were read to him and he agreed that he had carried out the robbery with which he is charged, though he did not agree that he had caused any harm to his victim. Consequently, I have not taken this factor into account at all in determining the proper sentence.

Section 392 of the Penal Code used to bring with it a maximum punishment of 30 years and a liability also to a fine and whipping. This section was, however, amended by the Emergency Penal Code Order 1988, which came into force on 28 September 1988.

This provides that a defendant convicted of an offence against s 392 is liable to the maximum sentence of imprisonment of 30 years and also with whipping with not less than twelve strokes.

Section 38 of the Interpretation and General Clauses Act (Cap 4) was amended by Order on 31 October 1988, so as to make the punishments prescribed under a number of sections of the Penal Code, including section 392, cumulative and not alternative.

A court must, therefore, impose, in addition to any sentence of imprisonment which it may think proper, the minimum sentence of whipping which is prescribed by the Emergency (Penal Code) (Amendment) Order 1988, that is to say, 12 strokes in this case.

The defendant was aged slightly over 17 at the time of the offence. He was, therefore, by virtue of the definition of 'youthful offender' in s 2(1) of the Criminal Procedure Code, a youthful offender, being above the age of 7 and under the age of 18 at the time of the offence.

I have taken into account the youth of the defendant and the fact that, and I accept his evidence as to this, he appears to have worked for most of the time since he left school, about two years ago, although his antecedents do not disclose this. Also to his expression of regret and his plea of guilty, which both reduce the sentence I would otherwise have felt obliged to impose.

I have given no weight, however, to the fact that he says he was affected by pills on that date, in view of s 85 of the Penal Code. Even if he did not know what he was doing at the time of the robbery, intoxication of this nature cannot constitute a defence, since the defendant took the pills voluntarily on his own admission. I note also that, by his plea of guilty to the charge, and his acknowledgement of the facts as correct, the defendant has acknowledged that he robbed the complainant and that at the time he did so, he realised what he was doing.

Although I give weight to his expression of regret for what he did, I cannot wholly ignore his previous conviction for theft, as a result of which he was bound over to be of good behaviour for 12 months in 1985. He has now committed a far more serious offence.

Fortunately, robbery is a rare event in Brunei Darussalam and, when it occurs, it is necessary for the courts to impose a substantial punishment on the defendant.

As I have observed, the maximum sentence of imprisonment is one of 30 years and, in addition, 12 strokes of the cane.

Bearing in mind all that the defendant has said, I regard the proper sentence in this case as one of 4 years' imprisonment and 12 strokes with a light rattan cane. By s 257(1) of the Criminal Procedure Code, the maximum sentence of whipping for a youthful offender shall be 12 strokes. There are, however, a number of provisions of the Emergency (Penal Code) (Amendment) Order 1988, which provide for a minimum number of not less than 12 strokes.

In the case of s 392, therefore, where a youthful offender is involved, the maximum and minimum number of strokes will be the same. It may be that the Attorney General may wish to consider, either altering s 257 of the Criminal Procedure Code, to provide for a higher maximum than 12 strokes in the case of a youthful offender, or to amend the Schedule to the Emergency (Penal Code) (Amendment) Order 1988, in relation to youthful offenders, so as to provide for a lower minimum sentence in their case.

The sentence of imprisonment will run from the date of the defendant's arrest on 17 November 1988.

Order accordingly.

Reported by *Ng Sheau Jiuan*